



AMERICAN PUBLIC WORKS ASSOCIATION

Your Comprehensive  
Public Works Resource

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July 18, 2011

Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TW-A325  
Washington, DC 20554

### **WC Docket No. 11-59 -- Acceleration of Broadband Deployment by Improving Policies Regarding Public Rights of Way and Wireless Facilities Siting**

The American Public Works Association (APWA) appreciates the opportunity to file comments in response to the Federal Communications Commission's (FCC) notice of inquiry (NOI) regarding acceleration of broadband deployment, published in the *Federal Register* on May 17, 2011. Through the NOI, the FCC seeks to identify means of improving rights of way policies and wireless facilities siting requirements. Because APWA takes this issue seriously, we will be filing twice in this matter. The Comments that follow were prepared with input by our Utilities and Public Rights of Way Committee. APWA has also been very active in offering our expertise, insights and experience as well as that of our members to a set of comments that will be filed by a coalition of local government national organizations.

APWA is an international educational and professional association of public agencies, private sector companies and individuals. Our organization represents 28,500 members who plan, design, build, operate and maintain transportation, water supply, sewage and refuse disposal systems, public buildings and other structures and facilities essential to our nation's economy and way of life. Public works professionals serve a diverse range of local communities, municipalities, counties, townships, villages and districts, whether large or small, rural or urban. Among the many responsibilities local public works officials have is to manage the public rights-of-way in the public interest.

Broadband offers communities and citizens many benefits, in areas including health care, education, public safety, commerce and culture. APWA and its members strongly support rapid deployment of broadband and believe that universal access will strengthen our economy and ensure a better quality of life for the citizens we serve. Local governments and local public works agencies in particular rely on broadband to better serve and protect the public.

Public corridors or strips of land known as public rights-of-way are normally acquired and developed by public agencies for transportation routes, water supply, waste disposal, power

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distribution, means of communications and similar services. Such services are provided for the common good of the public and are generally authorized and directed by public agencies. These public agencies have a statutory obligation to regulate and manage the use of public rights-of-way in the interest of the convenience, health, safety and welfare of the public. This includes providing for the operation and protection of public facilities.

Public rights-of-way are historically undervalued public resources that become increasingly congested as urbanization and implementation of new technologies occur. It is our responsibility to ensure that appropriate utilization of the public right-of-way occurs in accordance with all applicable local, state and federal laws. As stewards of public rights-of-way, local governments have a duty and responsibility to:

- Manage the public rights-of-way on behalf of their citizens to ensure public health, safety and convenience.
- Manage the surface of the public rights-of-way to ensure structural integrity, availability, safety and a smooth street surface for the traveling public.
- Manage the space below the surface of the public rights-of-way to ensure safe and economical access for all current and future users of the rights-of-way.
- Manage the space above the surface of the public rights-of-way, including the placement of overhead utility facilities, to ensure efficient use of space and to minimize safety hazards and impact on community aesthetics.

Decisions regarding management and control of local public rights-of-way belong with local governments. Managing public rights-of-way is complex, and local communities utilize a variety of management practices suited to local needs and public expectations. Public agencies have the important responsibility to keep public rights-of-way in a state of good repair and free of unnecessary encumbrances. The public expects local governments to ensure that the deployment of new services does not result in potholes, traffic backups and congestion, damaged sidewalks, ruptured water or gas lines, disrupted electrical power or diminished community aesthetics, particularly with respect to managing above ground versus below ground installations.

Respect for local control and local governments' long-standing authority to manage rights-of-way are necessary to ensure their safe and efficient operation. This authority includes the ability to establish permit, location, inspection and pavement restoration controls and rights-of-way restoration; to encourage cooperation among and develop scheduling and coordination mechanisms for all rights-of-way users; to obtain and maintain accurate information for locating existing and new facilities in the public rights-of-way; to hold responsible parties accountable for the restoration of the public rights-of-way; and to charge and receive compensation for use of the public rights-of-way.

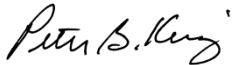
Rights of way management practices do not hinder broadband deployment. Many small communities have no permit requirements for work in the rights of way but are underserved. Utilities exercising reasonable communication and planning have projects activated efficiently.

A one-size-fits-all national policy on local rights of way management can neither adequately take into account nor properly address the balance of competing interests served by the various existing local policies and ordinances, nor suitably serve the best interest of individual communities. We stand firmly opposed, therefore, to the FCC proposing, recommending or adopting guidelines or rules affecting local rights-of-way. The FCC does not, nor cannot, have the expertise to propose or adopt appropriate rights-of-way management practices, guidelines, models or policies, and such pre-emption of local authority would be disruptive to local communities.

As an organization whose primary mission is education, APWA provides a forum for practitioners and professionals to discuss common issues and best management practices, including managing rights-of-way. Our members keep up-to-date on trends and emerging issues through timely publications, workshops, interactive conferences, training and chapter programs. Through the exchange of knowledge, best practices, new technologies and innovative solutions our members address new challenges and apply tailored solutions that will work in the communities they serve.

Thank you for considering our comments.

Sincerely,

A handwritten signature in black ink, reading "Peter B. King". The signature is written in a cursive, flowing style.

Peter B. King  
Executive Director